

**Bob Balgenorth**  
**Testimony to Little Hoover Commission**  
**January 26, 2005**  
**on**  
**Governor's CPR Reorganization Plan**

Chairman Alpert and Members of the Commission,

Thank you for the opportunity to testify on one of the most sweeping state reorganization plans ever proposed by a California Governor.

I am President of the State Building & Construction Trades Council. The Council represents 14 different construction crafts and trades in California with 142 affiliated local unions and 32 councils that have a combined membership of about 375,000 union members.

It is obvious that the CPR panel has arrived at a broad conclusion that state government would operate more efficiently – that taxpayers would get more bang for their buck – by merging the functions of many smaller operations into mega departments and agencies.

Thirty-two years ago – in 1973 – when Ronald Reagan was Governor, there was a similar view about government efficiency. The Legislature adopted Reagan's proposal to merge the Departments of Mental Hygiene, Public Health, and Health Care Services with the social service duties of the Department of Social Welfare.

The result was the creation of a huge State Department of Health. It looked great on paper, but the next five years proved that it didn't work in practice. After the Health Department merger in 1973, the groups served by the enormous mega-department found that their issues got hopelessly snarled in a maze of programs that overwhelmed upper-level managers.

There was a hue and cry for change, and in 1978, the Legislature responded by separating this oversized Department of Health into the Departments of Health Services, Social Services, Mental Health, Developmental Disabilities, Alcohol and Drug Abuse, and a new Office of Statewide Health Planning and Development.

I recite this history to simply note that sometimes the consolidations that look good on paper do not work out in practice.

First, regarding the reorganization proposal that is before us, the State Building & Construction Trades Council supports the position of the California Labor Federation.

More specifically, there are a half-dozen boards and commissions that have been proposed for elimination or merger that we believe would not be in the best interests of our membership or the millions of working people of California. Nor would they be in the best interests of the multi-billion-dollar construction industry, which is a huge and growing part of the state's economy.

They are the Commission on Health and Safety and Workers Compensation, the Occupational Safety and Health Appeals Board, the Unemployment Insurance Appeals Board and the Workers' Compensation Appeals Board. To them I want to add the Contractors State License Board and the Building Standards Commission.

### **Contractors State License Board**

The Contractors' License Board was established in 1929 and is now part of the Department of Consumer Affairs. The Board has a big job. It is responsible for licensing construction contractors, resolving consumer complaints about contractors, enforcing state laws involving contracting, and educating the public.

The Board has 15 members. Eleven are appointed by the Governor, two by the Senate Rules Committee, and two by the Assembly Speaker. Nine of the 15 are public members, of which eight are non-contractor consumers and one is a local building official. Five Board members are contractors and one is a labor representative. It licenses and regulates 43 classifications of contractors that make up the construction industry. There are about 280,000 licensed contractors in California.

The Contractors License Board appoints a Registrar of Contractors who oversees about 380 employees, including a "fraud team" that focuses on the underground economy and unlicensed contractors.

The Board has been an honest and responsive policeman for the construction industry. It processes more than 25,000 complaints and 25,000 new license applications each year, and in 2002-03 it revoked 801 licenses, suspended 890, issued more than 1,100 citations against unlicensed contractors, and another 757 against licensed contractors.

The Governor has proposed that the Board be eliminated and its functions transferred to the Department of Consumer Affairs. Although he provides no specific reason for eliminating the Contractors License Board, the Reorganization Plan's justification for eliminating the various independent licensing boards is that it will be a more efficient use of resources if the functions of these boards are organized into licensing, consumer information, complaint mediation, enforcement, communications, and education divisions.

The report also claims that the combination of licensing and discipline in one board creates the potential for a conflict of interest that can be resolved by transferring adjudicatory and complaint resolution functions to administrative law judges.

There are flaws in that premise. Transfer of Board functions into various divisions within the Department of Consumer Affairs will result in the loss of policy guidance and expertise specifically related to each occupation in the construction industry. Even if the various divisions of the Department develop specialists, they will not benefit from being directed by a governing body whose explicit mission is to protect consumers in the construction industry.

Moreover, the current Board has a labor representative to guard the interests of construction workers and eight consumer representatives to guard consumers' interests. The Governor's plan silences the voices of both consumers and workers by replacing those Board members with bureaucrats who do not speak for either group. That is both unfair and unwise. As the Board is now constituted, all of the stakeholders – labor, consumers, government, and industry – have a voice in making regulatory policy.

We also believe that the License Board's independent status has helped keep it free from inappropriate political influences it might encounter if it were absorbed into a department with no independent oversight.

The fact that both contractors and the public don't have to negotiate their way through a maze of bureaucratic red tape is one of the principle reasons the License Board has continued to operate efficiently over the years.

The Governor's proposed concentration of decision-making and policy-setting power in the Department of Consumer Affairs increases the opportunity for politics to dominate the process.

Instead, we should work to ensure that money paid by contractors to the Contractors License Board stays with the Board instead of being diverted into a large bureaucracy.

In short, the old saying, "if it isn't broke, don't fix it," applies here. We simply don't believe the Contractors License Board is broken.

### **The Building Standards Commission**

The second entity I want to discuss is the Building Standards Commission. The Commission, which was established in 1953, is an independent commission within the State and Consumer Services Agency.

Its primary duties are to coordinate and review building standards proposed by various state agencies – including the California State University and UC systems – before they are adopted as part of the California Building Standards Code.

The Commission also coordinates a model code adoption process for various state agencies, and adopts model codes for state-owned buildings.

The Building Trades Council believes it is important for the Building Standards Commission to maintain the independence and balance it enjoys under the current system. Commissioners now include a labor representative, a licensed contractor, consumers, an architect, a mechanical engineer, a local fire official, a local building official, a disabled member of the public, and a structural engineer. We believe the public as well as state and local governments are best served by maintaining this balance of interests.

Currently, the 11 members of the Commission are appointed to four-year staggered terms by the Governor and confirmed by the Senate. They are not compensated, but are reimbursed for travel expenses.

Eliminating the Commission would be a major policy error. The Department of General Services, which would absorb its functions, would not provide an independent review of proposed standards, and General Services would have to contract with outside experts or appoint outside advisory boards to acquire the expertise the Commission currently provides. That system would be less effective, more cumbersome, and most likely more costly than the current system.

While we think it is critical to preserve the Commission's present role, we do agree with the CPR's report that the process for model code selection is in need of reform.

For 40 years, California based its building standards on a stable and predictable set of model industry codes. However, for the last 3 code cycles, model code selection has resulted in protracted debate that has delayed updating of the California Building Standards Code.

The current process also presents the very real possibility that state code standards will change radically every three years, leading to unpredictability and increasing the costs of construction. We agree with the CPR report's recommendation that the Legislature must address the model code selection issue.

### **Commission on Health and Safety and Workers' Compensation**

Another board that is on the chopping block is the Commission on Health and Safety and Workers' Compensation. The Commission is a joint labor-management body created by the workers' compensation reform legislation of 1993.

It is charged with overseeing the health and safety and workers' compensation systems in California and recommending legislation or administrative changes that would improve their operation. The Commission is also charged with conducting an ongoing review of systems for workers compensation and the prevention of industrial injuries and occupational diseases in California and other states.

It is funded by penalties assessed by the Division of Workers' Compensation as a result of audits of workers' compensation insurers and claims administrators. The Commission's self-described role is to provide "a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions. This cooperative effort brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians."

The Commission has eight members, equally representing labor and employers, four of whom are appointed by the Governor, two by the Senate Rules Committee and two by the Assembly Speaker. Members serve four-year terms.

The Governor has proposed that the Commission be eliminated and its functions absorbed by the Labor and Workforce Development Agency. The Governor's Report gives no specific justification for the elimination of this Commission beyond describing it as "Administrative."

The Governor's justification – the elimination of bureaucracy in administrative functions – does not match the actual function of the Commission, which is to develop policy proposals for administrative or legislative reform through the continuing review of state programs and the receipt of input from various constituencies. "Transferring" these functions to the Labor and Workforce Development Agency makes no sense because the purpose of the CHSWC is to provide *outside* input from labor and employer representatives.

It was also particularly disturbing to read recently in The Sacramento Bee that the pharmaceutical industry is making elimination of this Commission a priority because their exorbitant profits were highlighted in the recent workers' comp reforms and policy papers by CHSWC.

**Occupational Safety and Health Appeals Board**  
**Unemployment Insurance Appeals Board**  
**Workers Compensation Appeals Board**

The Administration's proposal to abolish these three appeals boards and to transfer their functions to a new nine-member "Employment and Benefits Appeals Board" would not streamline government in any meaningful way.

Instead, the proposal would do away with the present system which has two important advantages:

- First, appeals are decided by boards whose members develop expertise about the statutes they administer.
- Second, the boards serve fixed terms so they are insulated from day-to-day political pressures.

The Administration proposes to substitute a system in which appeals are heard by board members who lack specialized expertise and serve at the pleasure of the Governor. That is a recipe for introducing politics and cronyism, not efficiency, into administrative review systems intended to provide due process.

No one disputes that these three appeals boards perform necessary and important functions.

The Occupational Safety and Health Appeals Board (OSH Appeals Board) serves as the final level of administrative review for appeals by employers of citations issued by the Division of Occupational Safety and Health for violations of workplace safety and health laws. The OSH Appeals Board has three members, representing the public, labor, and management. The members are appointed for staggered four-year terms.

The California Unemployment Insurance Appeals Board (CUIAB) hears appeals from workers and employers involving claims for unemployment and disability benefits. These include appeals of claims determinations made by the Employment Development Department (EDD), and petitions from employers concerning assessments made by EDD's Tax Branch.

The appeals are handled in the first instance by eleven Offices of Appeals throughout the state, and a losing party may then appeal to the CUIAB. About 20,000 appeals are heard each year by the CUIAB. The CUIAB has seven full-time members serving fixed terms. Five are appointed by the Governor and one each by the Senate Rules Committee and Assembly Speaker.

The Workers Compensation Appeals Board (WCAB) exercises judicial powers invested in it by the Labor Code. These powers include review of petitions for reconsideration of decisions by workers compensation administrative law judges in the Division of Workers Compensation. The WCAB also adopts procedures for the adjudication process.

For the most recent year reported on its website, 1997, the WCAB handled 5,584 petitions for reconsideration (out of 202,930 underlying cases). The WCAB consists of seven members appointed by the Governor and confirmed by the Senate, serving staggered terms of six years.

First, the Legislature provided for fixed, staggered terms for a good reason. This insulates the board members from day-to-day political pressures, and it prevents a particular Administration from replacing all the board members at once to pursue a political agenda.

Second, the Legislature provided for separate appeals boards for equally good reasons. Each of the three statutes is highly detailed and technical, and members of the present appeals boards are able to develop expertise in the statutes they administer. The systems of administrative review under the three statutes also involve very different procedures.

There would be no efficiency to centralizing review in a single board when the three statutes provide three separate procedural systems. The current seven-member CUIAB hears more than 20,000 appeals each year. The new, nine-member appeals board would necessarily have to split into panels to handle the heavy caseload; all nine members would not hear every case. If the board will sit in panels, it makes sense to have panels that have particular expertise with each of the three statutes – which looks very much like the current system of separate boards.

I would also emphasize that the work of these appeals boards is important to both workers and employers and that introducing politics into the appeals process will lead to more court cases to challenge appeals board decisions.

The CUIAB provides due process to unemployed workers who claim they were wrongfully denied benefits by an administrative law judge.

The WCAB provides due process to injured workers who claim they were wrongfully denied benefits by an administrative law judge.



The OSH Appeals Board provides due process to employers who claim they were wrongfully issued citations for violating workplace health and safety laws.

We would certainly be willing to consider changes in the size of each appeals board or reduction in the salaries of appeals board members. A tightening of the requirements for time spent on the job might also be in order.

But the bottom line is that the appeals boards are not intended to be “political” bodies accountable to a particular Governor. For all these reasons, I urge the Little Hoover Commission to recommend that these three vital appeals boards be kept independent and intact.

Thank you for the opportunity to testify on these important proposals.